

CENTRAL ANALYSIS BUREAU, INC.
225 WEST 34th STREET • NEW YORK, N. Y. 10122-0056

QA-20587

July 19, 1996

FHWA-97-2299-10

FHWA Docket No. MC-96-18
Federal Highway Administration
Office of the Chief Counsel, HCC-10
Room 4232
400 Seventh Street, S.W.
Washington, DC 20590

LEGS./REGS. DIV.

96 JUL 22 P 1:45

FEDERAL HIGHWAY
ADMINISTRATION

Re: Rules of Practice for Motor Carrier Proceedings;
Investigations; Disqualifications and Penalties;
Proposed Rule

Dear Sirs:

Central Analysis Bureau is a private organization whose function is to provide most of the nation's insurers of motor carriers with financial, operational and safety information concerning prospective and current motor carrier insureds. This information assists insurance companies in issuing policies, filings and endorsements so that motor carriers can comply with D.O.T. insurance regulations and statutes.

D.O.T. safety ratings are part of the safety information we make available to motor carrier insurers. Because of this, we believe we have a unique perspective as to the pluses and minuses of D.O.T. safety ratings, as well as their use by insurance companies.

Many of the shortcomings of the D.O.T.'s safety review program were set forth in the General Accounting Office's report, "Truck Safety - Improvements Needed in FHWA's Motor Carrier Safety Program" (GAO/RCED-91-30). While the hiring and training of additional staff may have rectified some of the problems identified in the GAO report, the decision to discontinue "safety reviews", effective October 1, 1994, appears to have been a retreat from the previously announced position of strengthening the safety rating program (even though "compliance reviews" were to be modified and expanded). The Proposed Rulemaking appears to signal a further (and perhaps, ultimately, a final) retreat by the federal government from the laudable goal of identifying potentially unsafe motor carriers. This is in spite of the NPR's statement "Safety ratings continue to gain in relative importance in the entire safety program ..."

DOCKET MC-96-18-7
PAGE 1 OF 4

Federal Highway Administration
July 19, 1996
Page 2

The NPR proposes to eliminate the Satisfactory and Conditional ratings. It also proposes to reduce the number of motor carriers rated Unsatisfactory. It would give motor carriers 45 days to appeal an Unsatisfactory rating, with 30 additional days given to the D.O.T. to notify motor carriers of its decision. Until the Unsatisfactory rating became final, the public would not be made aware of the proposed rating.

The reasons stated in the NPR for these proposed actions include "The safety ratings had routinely been made available ... to insurance companies to assist in risk determinations", "unintended significance [has been] given to the Conditional rating "by shippers and others" which might give an overly "negative connotation not intended by the agency" and "... decisions are made daily by shippers and insurers on the basis of safety ratings. This is a primary purpose of the rating as conceived by Congress and implemented by the agency".

In our experience, it would be an extremely rare occurrence for an insurer to base its decision as to whether or not to insure a motor carrier solely upon the carrier's D.O.T. rating. A motor carrier's D.O.T. rating is just part (and usually a minor part) of a large volume of underwriting information which is reviewed by the underwriter when deciding upon the pricing and insurability of a risk. Its primary function is not to determine insurability, but to help target those insureds and prospective insureds most in need of the insurer's safety engineering services.

Most insurers are aware that the primary focus of a D.O.T. inspection is to determine whether a motor carrier has adequate safety management controls in place in order to comply with applicable federal safety regulations and whether it is in compliance with these regulations. They are also aware of the significance of each rating; i.e., that Satisfactory means that a carrier has established and is using adequate safety management controls that meet D.O.T.'s standards, Conditional means that a carrier has inadequate controls that could result in violations of federal safety regulations and Unsatisfactory means that a carrier has inadequate controls that have resulted in violations of federal safety regulations.

It seems to us that the D.O.T. has placed the insurance industry (and itself) in a difficult quandary. On the one hand, the NPR states that the use of safety ratings by insurers is "a primary purpose of the rating as conceived by Congress". On the other hand, the NPR laments that insurers are using these ratings and taking action upon them. It is true that any rating system is subject to being misconstrued. However, we would suggest that a more appropriate response would be to disseminate a better explanation of the meaning of the ratings. We do not believe it would be in the public interest to eliminate the Satisfactory and Conditional ratings. These ratings have defined meanings, as stated above, and we would suggest it would be overreacting to terminate them merely on the chance that they might be

DOCKET mc-96-18-7
PAGE 2 OF 4

Federal Highway Administration
July 19, 1996
Page 3

misinterpreted. We would go further and suggest that to avoid these ratings being misinterpreted, the underlying investigative report should be made available to the public. It would then be clear what the investigator found; no speculation would be necessary.

If the Federal Motor Carrier Safety Regulations have any validity and meaning at all, a "negative implication" from violations of these regulations is entirely proper and appropriate. That it not be an "overly negative implication" can be rectified by better informing the public.

The NPR sets up a premise: "If the Unsatisfactory safety rating is to be considered tantamount to a determination that the carrier assigned such a rating should not to [sic] be operating in interstate commerce without appropriate corrective measures ..." and follows with an unsubstantiated declaration, "... then such a carrier should be well below average and the percentage of carriers earning such a rating ought to be relatively small". We do not believe that because too many carriers are violating FMCSR, then somehow the percentage of those the public is informed about should be changed to a smaller number. If 20% of inspected carriers have inadequate controls that have resulted in violations of FMCSR, then 20% should be rated Unsatisfactory.

There has been some publicity concerning a handful of motor carriers whose violations were so flagrant that the D.O.T. tried to have them shut down. We would like to believe that the conditions found in this handful of companies were not representative of other carriers rated Unsatisfactory and we do not subscribe to the premise that all carriers rated Unsatisfactory should not be operating in interstate commerce.

We should also like to comment upon the proposed appeal process, as set forth in the NPR. In what should be a straightforward process - either a motor carrier is in violation or is not - the carrier has 45 days to appeal which can be extended for 10 additional days, then FHWA has 30 days to notify the carrier of its decision, then the carrier can request "expedited administrative review" which would further stay the process. During the entire review process, the violations would not be made public and the identity of the violators would be kept secret.

We fear that there may be lengthy delays in disclosing safety ratings should the proposed appeal process be adopted. We would recommend that the D.O.T.'s inspector's report, findings and proposed rating be immediately made public. We would let the carrier's appeal and review petitions be made public, as well. The ultimate findings, along with the final rating, should also be a matter of public record.

DOCKET mc-96-18-7
PAGE 3 OF 4

Federal Highway Administration

July 19, 1996

Page 4

In summary, if the D.O.T.'s safety review program is not working as well as it should, then correct it and improve it. Don't truncate and cripple it. If it is felt that the public (and insurers) are misinterpreting the meaning of the ratings, then educate the users - don't eliminate the ratings. If violations of FMCSR are meaningless and not deserving of remedial actions, fix the FMCSR. If they are meaningful, don't hide the violators by reducing the number of carriers rated Unsatisfactory.

We have read of the pressure to change the system that is being exerted by motor carriers and motor carrier groups. We believe that this program is beneficial to the public and its interest in maintaining high safety standards for the truckers using our nation's highways. We hope that the D.O.T. will decide not only to retain the basic concept of the present safety review program, but will broaden and improve it so that it will be even more useful in assisting the safety efforts of insurers of motor carriers.

Very truly yours,

CENTRAL ANALYSIS BUREAU, INC.



Andrew M. Schindel
President

AMS/ph

DOCKET MC-96-18-7
PAGE 4 OF 4